

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SIDNEY AND DE DAUN BUEGELEISEN)

For Appellants: Sidney Buegeleisen,
in pro. per.

For Respondent: Crawford H.. Thomas
Chief Counsel

Marvin J. Halpern
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sidney and De Daun Buegeleisen against proposed assessments of additional personal income tax and penalties in the total amounts of \$78.58 and \$169.60 for the years 1966 and 1967, respectively.

The sole issue presented is the propriety of the respondent Franchise Tax Board's proposed assessments which are based upon a federal audit report.

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Appellants filed timely joint California resident personal income tax returns for 1966 and 1967 on which they reported gross income of \$214.21 and \$1,988, respectively, and indicated that no tax was due. The Internal Revenue Service conducted an audit of appellants' federal returns for 1966 and 1967 and proposed substantial increases in the income reported thereon. On June 30, 1970, and within the limitation period set forth in section 18586 of the Revenue and Taxation Code, respondent issued Notices of Additional Tax Proposed to be Assessed based on the federal adjustments. The proposed assessments were protested by appellants.

A series of conferences between appellants and representatives of the Internal Revenue Service resulted in further agreed upon adjustments to appellants' taxable income which was set at \$8,042.21 and \$9,338 for the years 1966 and 1967, respectively. These figures resulted from adding \$10,028 and \$9,542 to reported income for those respective years. Respondent revised its notices to accord with the conference results and appellants protested the revised notices. Respondent denied the protest and this appeal resulted.

Section 18451 of the Revenue and Taxation Code provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. We have repeatedly held that respondent's determination of, deficiencies based upon a federal, audit report is presumed to be correct, and the burden is on the taxpayer to show that it is in error. Where the taxpayer has agreed to a negligence penalty resulting from a federal audit the taxpayer also must clearly show error to defeat a similar penalty assessed by respondent under section 18684 of the Revenue and Taxation Code. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968.)

Here appellants attack the federal determination by alleging that the figures do not take into account a \$4,900 legal expense during 1967. They also allege that they agreed to the federal adjustments, even though they did not understand them, because they were too weary to continue the dispute. A review of the Conference Audit

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Statement contained in the record clearly shows that the federal figures did take into consideration legal and professional fees of \$5,000 for the year 1967. Specifically, \$2,550 of this amount was allowed as a business deduction in establishing a net loss of \$312 for the year. In addition, \$2,450 was considered in establishing appellants' 1967 personal expenses as a step in reconstructing their income for the year. The fact that appellants grew weary of the struggle and the claim that allegedly they did not understand the proceedings are both irrelevant here.

We conclude that appellants have failed to meet their burden of establishing error in either the federal determination or respondent's action and, accordingly, respondent's action must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Sidney and De Daun Buegeleisen against proposed assessments of personal income tax and penalties in the total amounts of \$78.58 and \$169.60 for the years 1966 and 1967, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of April, 1973, by the State Board of Equalization.

William W. Lynch, Chairman
John W. Lynch, Member
Robert W. Lynch, Member
Robert W. Lynch, Member
_____, Member

ATTEST:

W. W. Lynch, Secretary